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AN

ANSWER

TO THE

GENTLEMANS

Letter to his Friend:

SHEWING THAT

BISHOPS

MAY BE

JUDGES

IN

Cauſes Capital.

PSAL. 82. 1.

Deus ſtat in Congregatione Dei: in medio Deorum judicat.

LONDON,

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AN ANSWER TO THE *GENTLEMAN's* Letter to his Friend: SHEWING THAT BISHOPS MAY BE JUDGES IN CAUSES CAPITAL.

SIR,

I Thank you for the Gentleman's Letter you sent me, touching *the Right of Bishops sitting as Judges in Cases Capital*. This *Order* of Men is not Sacred enough, it seems, in the Constitution, to secure it against (the Iniquity of these last Times) Attempts of Rage and Extirpation.

Not to mention *Martin Mar-Prelates*, nor others of former Times; within our own Memory, Mr. *Prynn* led up the Van against them (1640.) in a Book of this Title, *viz.* [*Lord-Bishops, none of the Lords Bishops.*] After their *Divine* or *Apostolical* Constitution, they began to question their *Right* to *Sit* in *Parliament*. This occasioned that *Quodlibetical* Question, [*Whether the Bishops make a Fundamental and Essential part of the* English

Engliſh *Parliament*. The Rational and Solid *Anſwer* to which Queſtion was Printed in 1661, and now Reprinted (as then put forth at firſt) *for the Information of ſome, the Confirmation of others, and the ſatisfaction of all.*

The *Gentleman* who wrote this Letter, ſeems to grant the Biſhops a large ſhare of Power within this Kingdom; yet as to *Secular* Matters, he does inſinuate ſome kind of *Prohibition* they are ſuppoſed to lie under, though his Arguments are very inconſequent to prove it. The *Reſcript* of *Honorius* (he ſaith) & *Theodoſius*, & the *Decree* of *Juſtinian* forbid them to have to do *in Secular Matters*? Therefore the Kings of *England* (who are of another Mind, upon good experience of their judgment and fidelity) may *not admit* them *to have any Communion with Publick Functions*: Nor is the Argument leſs inconſequent, which the *Gentleman* inſinuates from the Apoſtles Declaration and Practice. The Argument muſt be this, A few men are appointed by our Lord to propagate the Goſpel, and plant the *Chriſtian Church* all the world over; and they think it unreaſonable they ſhould neglect this generous Employment (impos'd upon them immediately from Heaven, *to ſerve Tables*, that is, to relieve the Temporal Needs of indigent Diſciples) therefore when the Church is generally eſtabliſhed, Biſhops ſetled in every *Dioceſs*, and Miniſters in every *Pariſh*, it is equally unreaſonable that the King ſhould intruſt any of the *Clergy* with any *Secular Employments*.

But after theſe *By-blows*, this *Gentleman* tells us, *This is none of his buſineſs* (which he had therefore done better to have let alone;) 'Tis the *Critical* point he ſtands upon, which he calls *Vexata Quæſtio*, what is to be done in Parliament, that is, in *their Judicial way* upon *Trials*, not in their *Legiſlative* Capacity, paſſing Acts of *Attainder*, in which the *Gentleman* is pleaſed to confeſs [*I know that Biſhops have born a part; but* (ſaith he) *that is not now the Queſtion, but only this, Whether the Lords Spiritual have a Right to ſtay and ſit in Court, till the Court proceeds to the Vote of Guilty, or Not Guilty.*] This *Gentleman* concludes, They *ought not*. But the Queſtion truly and preciſely ſtated, is only this; Whether *of Right* they *may* or *may not*? And having diligently examined what hath been ſaid on both ſides (as the *Gentleman* hath adviſed me) I profeſs to differ from him, finding no ſufficient Reaſon to change my Opinion, which is for the *Affirmative*.

But the better to carry on his *Negative*, this *Gentleman* falls upon *Two Queſtions* more, which may be thought *preliminary*

to

to this other. The First is, touching the *Peerage* of the Lords Spiritual: The Second, Whether they make a *Third Estate* in Parliament? These two fall in *collaterally*, and must be considered before we fall upon his main *Battalia*, mustered up for the Defence of the Opinion we oppugn.

1. That the Bishops make a *Third Estate* in Parliament, there is very much alledged in the *Treatise* forementioned (from the Examples of all Christian Kingdoms of the *Gothick Model*, from *Titus Livius*, Sir *Edward Cooke*, the Parliament-*Rolls* of King *Richard* the Third, and the *Recognition* of the Lords Spiritual and Temporal with the Commons, 1 *Eliz.* 3. & 8. and what is argued from thence, *p.* 16, 17. of *the Rebels Plea*, Printed 1660.) to which I shall add that Mr. *Sheppard* in his *Grand Abridgment*, and the Word *Parliament* tells us, That *the Parliament in* England *is the Assembly of the King and the Three Estates of the Realm*, viz. *the Lords Spiritual, the Lords Temporal, and the Commons*. And this *Gentleman* does acknowledge (*p.* 86) that *the Subjects of* England *are divided into Three Estates, The Nobility the Clergy, and the Commonalty*. These, he saith, are the several *Estates* of the Kingdom. But if the Bishops be not *One* of these *Estates*, then one of the *Three Estates* of the Kingdom is not *Represented* at all in Parliament (for he saith, (*p.* 88.) that *the Convocation where all the Clergy are present in their* Persons, *or their* Representatives, *is no part of the Parliament*,) which is absurd. The Authority of Mr. *Selden* to the contrary, is most consonant to Reason; and the Practice at the *Ratification of the Peace* with the *French* King, 9 *H.* 5. & 11 *H.* 7. are further Confirmations of it.

But this *Gentleman* saith (*p.* 88.) *The Three Estates of Parliament are clean another thing; each must have a Negative Voice to all that passeth there*: I might take notice by the By of his Mistake herein; for there is nothing passeth where use is made of the *Negative* Voice: but *I* must observe, that this is a cleanly begging of the Question. As for the Bishops being *intermingled* with the *Earls* and *Barons*, and so if they be an *Estate*, it is an *Estate* within an *Estate*, *like a Nest of Boxes, one within another*, there is no absurdity at all in it: for when *Christianity* had prevail'd (not to recur to the time when all the Members of Parliament sate in one House together) the Piety and Prudence of those times thought the *State* of the Church (with all its Rights and Interest) *safe* enough among the *Nobility*, without any peculiar *Negative* voice to secure it; and yet the Bishops *Right* of *Protesting* (upon just occasion) serves very well instead of such a *Negative*.

But this *Gentleman* thinks it would be *a great Diſparagement* to the *Peerage* of *England*, that *Two Eſtates* muſt be put together, to keep the *Ballance even* with the *Houſe of Commons*, who are but *One* Eſtate; and that *their Two ſhould ſignifie no more than that One*: (taking no notice how much more they ſignifie, though they do very much,) To this I anſwer in the general, That *Numbers* of perſons add no *Right* or *Priviledge* to *a Politick Eſtate*: The *Peerage* of *England* had the ſame Power and Dignity when they were not half ſo Numerous.

But to be more particular, Experience tells us (and we have an Inſtance too freſh in memory) That neither the Biſhops *Proteſtation*, nor the Temporal Lords *Negative Voice*, nor the Kings *Le Roy S'aviſera*, are ſufficient to hold the Ballance even when the Commons depart from the Principles of Honour, Juſtice, and Loyalty. And as they never pretended to be *infallible*, ſo have they not always been obſerved to be ſo *calm* and *ſteddy* in their Proceedings, as becomes the Wiſdom and Honour of ſo Grave and Solemn a Convention. In 50 *E.* 3. they deſired, that the Lord *Latimer*, the King's *Chamberlain*, (for pretended Oppreſſion) might loſe *all his Offices, and be no longer of the King's Council*; which the King granted; yet afterwards 51 *E.* 3. at the Requeſt of the *Commons* themſelves, *he was reſtored to all, and declared innocent*. This *Gentleman* was ſo ſenſible of this their *Prejudice* and *Raſhneſs* (attended with ſo much *Levity*) that he could not paſs it by, without ſetting ſome Remark upon it, *p.* 12.

But when *Juſtice*, *Loyalty* and *Honour* governs their Debates and Reſolutions, we may put the King, and (to uſe his own Illuſtration) all *the Three Eſtates* of Parliament into the ſame *Neſt of Boxes*, and yet their reſpective *Intereſts* (which is the *Intereſt* of the whole Kingdom interwoven) will be *ſecure*, and preſerv'd inviolate.

But the *Gentleman* tells us further, That *if the Biſhops be one of the Three Eſtates, nothing can paſs in* Parliament *without them*. This may be generally true among States *coordinate*, without a *Sovereign Head* over them; and when a *Rival* is ſet up, to give *Check-mate* to the *Sovereign* Authority, as it was in the time of Hen. 8. mentioned by this Gentleman (at *p.* 92. when the Queſtion was [*To whom the Supream Juriſdiction did belong, to the King, or to the Pope?*] (In the time of ſuch a *Competition*, the *Crown* is obliged to ſecure it ſelf againſt ſuch an *Uſurpation*, and does moſt juſtly abandon the *Clergy* that ſides with it.

But 2. If *Acts* have paſſed without the Biſhops, they have likewiſe

likewiſe done ſo (as by ~~him~~ ſome is ſaid) ſometimes without the *Commons*. *Egbert*, who firſt united the Seven Kingdoms of the *Saxons*, under the common Name of *England*, he caus'd to be conven'd at *London* His *Biſhops* and *Peers* of the higheſt Rank, to adviſe upon ſome courſe againſt the *Daniſh Pyrates*, (this was a *Military* Buſineſs, and *Bloud-ſhed* might have enſued upon the Stubbornneſs of thoſe *Pyrates*) who infeſted the Sea-Coaſt of *England*. And King *Ethelwolph* in Parliament or Aſſembly of his States, at *Wincheſter*, Anno 855. by the Advice and Counſel of the *Biſhops* and *Nobility*, confirm'd unto the *Clergy* the *Tenth Part* of all mens Goods; and Ordered that the *Tythe* ſo confirmed unto them, ſhould be *free* from all *Secular Services* and *Impoſitions*. And *Wingate* in his *Abridgment*, and the Word *Parliament*, tells us, out of the *Mirrour of Juſtices*, of an Act in *Ælfred's* Time, *That Parliaments ſhould be held twice a year, and oftner if need requir'd*. But (note, ſaith he) *This was by the King and Lords only*. And I believe we may obſerve the like practice among ſome of this *Gentleman's* Precedents.

Theſe Great Councils were the Parliaments of thoſe Times, Let. p. 72.

But it is much more ſatisfactory, when the Laws are Enacted by the *Sovereign* Authority, at the *Requeſt* of the *Commons*, with the *conſent* of the Lords *Spiritual* and *Temporal*; that is, by the *King*, with the joint *Aſſent* of the *Three Eſtates* of Parliament; let us not therefore diſſolve or drive them away when we have them.

That which is alledged out of Biſhop *Jewel* and *Crompton*, I refer you to the *Anſwer* of the *Quodlibetical* Queſtion for your ſatisfaction. p. 93. to 98.

That King *James* was of this Judgment, is evident from the very Words and Speech produced by this *Gentleman* to the contrary. *The Parliament* (ſaith he) *is compoſed of a Head and a Body; The Head is the King, the Body are the Members of the Parliament: This Body again is ſubdivided into two parts; the Upper and the Lower Houſe; the Upper Houſe compounded partly of Nobility, Temporal men, who are Hereditable Counſellors to the High Court of Parliament, by the Honour of their Creation and Lands; and partly of Biſhops, Spiritual men, who are likewiſe by virtue of their Place and Dignity, Counſellors ad vitam, Life-Renters of this Court. The other Houſe is compos'd of Knights for the Shires, and Gentry and Burgeſſes for the Towns.*] Here we ſee, though the King makes but *Two Houſes*, yet he does clearly diſtinguiſh them into *Three Eſtates*, though he does not call them ſo.

To what is ſaid by *Stephen Gardiner* and *Finch*, I oppoſe the Teſtimonies of *Livy*, *Selden*, *Cooke* and *Sheppard*: To the

Expreſſions

Expreſſions of the Late *King* of B. *Memory*, in his Anſwer to the 19 *Propoſ.* (when he was fluctuating in the midſt of a Storm gathering round about him,) and to the *Declaration* of the *Commons*, 2 *H.* 4. *n.* 32. I might Anſwer, That the *Upper Houſe*, in a *large ſenſe* (conſiſting of Lords Spiritual and Temporal ſitting and voting together) may be taken for *One* Eſtate: But taken *preciſely*, and in *a ſtrict ſenſe*, as their Concerns and Intereſts are diſtinct, ſo they are clearly *Two*. But to thoſe Authorities, I ſhall rather oppoſe the Act of *Recognition*; 1 *Eliz.* 3. Where the *Lords* Spiritual and Temporal, and the *Commons* in that Parliament Aſſembled, do *Recognize* the Queens Majeſty to be their true, lawful, and undoubted Sovereign Lieged Lady and Queen in theſe words, [*We Your moſt Faithful, Loving, and Obedient Subjects, repreſenting the* Three Eſtates *of this Realm*] which evidently ſheweth the *Queen* was not (there) eſteemed one. So when the Funerals of *Hen.* 5. were ended, the *Three Eſtates* did Aſſemble and Acknowledge his Son King. To think to elude ſuch Evidence, by ſaying (as this *Gentleman* does in the like caſe) that ſuch Expreſſions are delivered *obiter*, upon the By, is to make, what we fancy not, in any *Statute*, utterly *void*, and of none effect.

The next Queſtion concerns the Biſhops *Peerage*; For the *Affirmative*, we have theſe things to ſay,

1. That the Prelates are called by the ſame *Writ* (for *Form* and *Manner*) with that directed to the *Temporal* Barons: ſo the Anſwer to the *Quodlibetical Queſtion*: That they Sit and Vote there by a *double capacity*; as *Biſhops* firſt, in reference to their ſeveral *Sees*; and ſecondly, as *Peers*, in reſpect of their *Baronies*. Hereupon they affirm to the Lords *Temporal* in Parliament holden at *Northampton Hen.* 2. as *Selden* reports, *We ſit not here as Biſhops only, but as* Barons; *we are* Barons, *and you are* Barons; *here we ſit as* Peers. And ſome *Statutes* call them Peers of the Land *in terminis*.

2. 'Tis his *Grace* of *Canterbury*'s Title, *Primus Par Angliæ*. That the *firſt* Peer ſhould be no Peer, is an unheard of Soleciſm. If he be a Peer, the reſt of the Biſhops are his *Com-peers*, what ever they are to the Lords *Temporal*. *John Stratford* Archbiſhop of that place, in the time of *Ed.* 3, claim'd this Priviledge in the Right of his *See*. And the Proteſtat. of *W. Courtney*, elſewhere mentioned, with the reſt of the Biſhops, is another pregnant Evidence to this purpoſe. And 25 *Edw.* 3. The Prelates put up this Petition to the King (as the *Gentleman* himſelf relates it, *p.* 83.) *Seeing Archbiſhops and* Biſhops *hold their Temporalties*

poralties of the King in capite, *and therefore are* Peers *of the Land as other Earls and* Barons *are, that you will be pleaſed to grant unto them, that no Judge may henceforward, for meer contempts, cauſe their* Temporalties *to be ſeized.* Here we have a *Prayer*, that their *Temporalties* may not be *ſeized*, and the *Reaſon* of it; becauſe they are *Peers*, as *Earls* and *Barons* are. The King grants their Petition, and *allows* the Reaſon. The King cannot err in *Titles*; his *Allowance* therefore is a ſufficient *confirmation* of their Peerage. And this *Gentleman*, *p.* 93, &c. when he argues againſt their being a *third Eſtate*, he tells us, *William the firſt erected the temporalties of Biſhops into* Baronies, *to hold* in capite; *and upon account of thoſe* Baronies, *both the* Temporal *Lords and* Spiritual *had of right place in Parliament, and were bound to ſerve him there. They were all* Fœdal Barons, *all holding by one tenure, and by that tenure ſitting in* Parliament. And a little after he ſaith, *They are ſtill qualifi'd to be Members of* Parliament, *as before, a Baron ſate as a Baron, an Earl as an Earl. Being made by Patent, or by Writ, or by holding ſuch a proportion of Land, alters not the Caſe as to their ſitting in* Parliament; *for it is being of ſuch a degree which makes them* Peers *of* Parliament.] One would think this is cleer enough for the Biſhops *Peerage*. But beſides, either the Biſhops ſit in Parliament as *Peers*, or as *Commoners*: if as *Commoners*, then his own Argument, *p.* 90. will be return'd upon him; *Would it be for the Honour of the Houſe of Lords, that Commoners muſt be put to them, to keep the Ballance even with the Houſe of Commons? And moſt clearly it would be a Diſparagement to the* Peerage *of the Kingdom, the Temporal Lords, and would make them to be a poor Eſtate, that a number of Commoners muſt be joyn'd to them, to make up their* Negative Voice, *and ſet them upon even ground with the Houſe of* Commons. But the truth is, the Biſhops Sit and Vote in Parliament (as we ſaid afore) by a *double capacity*; as *Biſhops*, firſt, in reference to their ſeveral *Sees*; and ſecondly, as *Peers*, in regard of their *Baronies*. All the Lords are *equal* in reſpect of their *Peerage*, and ſo they make up but *one Houſe*; but they are diſtinguiſh'd by their *Nobility* and *Spirituality* reſpectively, and ſo they make up *two Eſtates* diſtinct and different.

But to prove that they are no *Peers*, this *Gentleman* fetches an Argument from *Magna Charta* it ſelf, I know it ſaith, *Every man that is tried at the King's Suit, muſt be tried by his* Peers, whether he be *Amerced*, or *Impriſoned*, or *Diſſeiſed*, or *Outlaw'd*, &c. it muſt be *by his* Peers. But this Argument makes clear againſt him; for he himſelf informs us, *p.* 11, 12. that the Lord *Latimer*, who was the King's *Chamberlain*, for Oppreſſion in ſe- *Pag.* 85. *Cap.* 14, & 29.

veral places in *Britain*, and in *England*, was by the *Biſhops* and *Lords* adjudged to be *impriſoned*, and put to *Fine* and *Ranſom*; and the Lord *John Nevil*, a *Privy Counſellor*; for buying ſome Debts due by the King, at eaſie Rates, to make advantage to himſelf: He mentions ſome *others*, and concludes; *At all theſe Trials the Biſhops were preſent, and no body ſayes but they might*: which makes it evident (if the Law of *Magna Charta* were obſerved) that the Biſhops ſate as *Peers* in giving Judgment upon thoſe *Culprit*-Lords.

But for all this, the *Gentleman* hath a very ſtrong Objection out of *Magna Charta* againſt the Biſhops *Peerage*; and 'tis this, *Ibid.* 85. If any Biſhop be tried for any *Capital* Offence, he is tried by the *Commoners*, and that is the *Common Law* and *Practice* of the Land; then (ſaith he) muſt *Commoners* be his *Peers*, and *he* *p.* 86. and *Commoners* muſt be *Pares*. A *Temporal Lord, Duke, Earl* or *Baron cannot be Judge in the caſe of a Biſhop*, (*out of Parliament*) *nor can any Biſhop be their Judge, how then can they be ſaid to be* Pares, Fellow-Peers? *For my part* (ſaith he) *I ſee not*. But I will undertake to read the Riddle to him: the King may *reſtrain* his *Favours*, and *limit* his *Grants* as himſelf pleaſeth: the Dignities and Priviledges of the Lords Spiritual are not *Hereditary* like thoſe of the Lords Temporal, but only *Perſonal*, and conferr'd upon them in regard of their *Holy Function*. Hereupon, when they are *impeached* for any *heinous Crime*, which is ſuppoſed to *deſecrate* their perſons, they are *interpretatively* (though not *formally*) *degraded* *, and by a *Fiction of Law* (not *unuſual*) *dead* in that capacity, *diveſted of their Peerage with their Spiritualities*, and ſo (being in the ſenſe of the Law reduced to that condition) they come to be tried as *Commoners*. And thus much for the Biſhops *Peerage*.

* *Privilegium perſonale amittitur, extincta perſona cui id conceſſum eſt.* And ſuch perſons are reputed dead in Law.

3. For their *Right* to Sit as Judges in *Caſes Capital*, as this *Gentleman* ſaith, *p.* 3. *It deſerves a ſtrict enquiry, and we ſhould do well to conſider upon what ground the Prelates were prohibited having Votes in Caſes of Blood*. Such a Prohibition indeed is extant; but it is Authentical only in the *Canon Law*, as we ſhall evince anon: but this Law is *Popiſh*, grounded upon Principles of *Superſtition, Uſurpation*, and *Papal Tyranny*; and is very *irrational* and *uncharitable*, according to the uſual practice of it. This I doubt not to make appear to the unprejudiced and impartial Reader.

In the Interim, I think to remove a great miſtake of this *Gentleman*, who tells us, that *Mat. Paris* a *Monk*, *one that would* *Let. p.* 73. *not be partial for the Lords Temporal in relating matters, to give them*

more power in Judicature, and leſs to the Lords Spiritual, than of right belonged to each, and looking upon this excluſion of the Prelates from the power of Judging in ſuch caſes, to be ſome diminution of their Omnipotency, which they were ſo ambitious of, he therefore ranks it amongſt the Conſuetudines iniquas, *the wicked Cuſtoms of the former times.* I ſay, herein the *Gentleman* has committed a great *miſtake.* 'Tis true, their *preſence* in Parliaments, at ſuch *Debates* was debarr'd, and the reſtraint was put upon them by *this* Law, and none elſe: but ſo far were the *Clergie* of thoſe times from ranking this *Canon-Laws* amongſt thoſe *wicked Cuſtoms*, that indeed they had it in too high a *veneration*; and *this* the *Gentleman* himſelf obſerves in divers places of his Letters, averring it to be *that Law, to which only the Clergy of thoſe times would be ſubject, conceiving themſelves above, and not bound by any other.* p. 68. And ſome Laws before that, p. 22. He confeſſeth, *The Canon Law was to them above all Laws, and what was forbidden by that Law, they could not have a thought that it could in any ſort be Lawful for them to challenge, as their right upon any account.* This *Gentleman* knew, they did look upon it as *ſacred*: They *appeal* to it, and *plead* it for their *exemption*; and this he ſets down with his own Hand (at p. 20.) in theſe words: *Quid in præſenti Parliamento agitur de nonnullis materiis in quibus non licet nobis alicui eorum juxta ſacrorum Canonum inſtituta, quomodo libet perſonaliter intereſſe*: Becauſe in this preſent Parliament *ſome things are to be tranſacted, at which it is not lawful for us, by the Decrees of the Holy* Canons *to be perſonally preſent*: This is the ground and reaſon of their proteſtation. The *wicked Cuſtoms* therefore which that *Monk* inveighs againſt, and which coſt *Becket* ſo ſevere a Penance, muſt be ſought for elſewhere, amongſt the *reſt* of thoſe *Sixteen Conſtitutions* of *Clarendon.*

But whatever Opinion the *Clergy* of thoſe times had of this *Canon*, I doubt not to make it evident that it is grounded upon Principles of *Superſtition*, for as the Reverend *Davenant* hath it, *Quid impium, quid illicitum? What is in it that is impious, What that is unlawful, What that is contrary to the Office or Sacredneſs of a Prieſt where there is a juſt authority for it, to bridle and reſtrain ſuch as are notoriouſly wicked, and diſturbers of the Chriſtian Common-wealth, by civil penalties, and corporal inflictions? The Angels of Heaven think it no way diſagreeable, at Gods command, to inflict corporal puniſhments upon the wicked. And why ſhould the Angels of the Church at the appointment of the King, who is Gods Image upon Earth, think it unlawful to adjudge the ſame wicked perſons to deſerve puniſhment? The Act and Exerciſe of civil Juriſdiction of its own nature is not diſagreeable* Determ. 11.

to

to the most holy person, nor any way opposite to the Sacerdotal Function. We have the Authority of God himself in the practice of his most Ancient Church, to justifie this Jurisdiction. Under the Law God himself joyn'd it to the Sacerdotal Office; it is not strange therefore, nor forbidden by Divine Law, that the Priest should obtain a Civil Jurisdiction. We find it exemplified in Eli *and* Samuel, *and the* Maccabees, *and all that were invested with the Office of* High Priest. This could not be expected amongst the *Apostles*, because then the *Civil Magistrates* were not *Christians*: yet *S. Peter* had once a supply of *Civil Authority* by a *Miracle*; and to shew that it was not *unlawful* for an Apostle to give Sentence in *Cases Capital*, He pronounc'd *Saphira's* Doom for *Sacriledge* and *Lying*, Acts 5. 9. *Behold the feet of them which buried thy Husband, are at the Door, and shall carry thee out.* But these *New* Masters of *Israel* were afraid a *Sentence* of Justice should defile them with the *Blood* of a Malefactor; like the *Priests* and *Elders* among the *Jews*, John 18. 28. when they had bought and sold the Life of our Blessed Lord, and used all the Tricks that Craft and Malice could suborn to destroy him; so *precise* they were for all that, they would not go into *Pilates* Judgment Hall, least they should be *defiled* and unfit *to eat the Passover*. 'Twas the *Superstition* of those Men, to think they could render the Priests *Office* more *Sacred*, and put more veneration upon his person, then Gods own Institution had done. They would not have him interess or concern himself in *a Case of Blood*; least it should *desecrate* and *unhallow* his Person, and *stain* his *Function*. But we know that all Virtue is *Ornamental*; and 'tis as well an *Act of Justice*, to condemn the *Guilty*, as to acquit the *Innocent*.

See Numb. 25. 7, 13.

2. Here is *Usurpation* in this *Canon*, and it is flatly against the King's *Supremacy*. By this means a *Foreign* Power restrains the *Sovereign Authority* of the Kingdom from commanding the Service, or making use of the Duty of his Subjects in such Cases. The Force of this *Canon* divided the *Prelates* of those times between the *Prince* and the *Pope*; either they did not understand, or they did wilfully neglect their Duty; and some Instances of the mischievous effects hereof this *Gentleman* gives us in his Letter. He tells us, *p.* 7, 8. 5 *E.* 3. *The Parliament was declared to be called for the redress of the* Breach *of the Laws, and of the Peace of the Kingdom. And because the* Prelates *were of opinion, that it belonged not properly to them to give counsel about keeping the Peace, nor punishing such Evils, they went away by themselves, and they returned no more.* Nor did their Disobedience

stop

ſtop here; but the *Gentleman* tells us further, at *p.* 96. That 20 *R.* 2. "the Biſhops upon occaſion of the Statute of Proviſors, enter a Proteſtation againſt whatſoever ſhould be "done in derogation or reſtriction of the Power of their Holy Father the Pope, ſaying, they were ſworn to his Holineſs, "and to the Court of *Rome*. Theſe, and the like Inſolencies were the Fruits of thoſe *Immunities* which the *Prelates* of *thoſe* times received by the *Decrees* of thoſe *Holy Canons*.

And as *this* Canon was grounded upon *Superſtition*, and did *confront* the Kings *Supremacy*, ſo the Practice of it (in thoſe times) was *irrational* and *uncharitable*.

Firſt *Irrational*; for, 1. Why were the *Prelates* debarr'd the liberty of ſitting Judges in ſuch Caſes? Was it becauſe they wanted Knowledge, Reaſon, or Diſcretion? I ſuppoſe not: If it were not becauſe they had *too little*, but *too much* of theſe Qualifications: That was *Irrational*.

2. That the *Prelates* have been, and may be Judges of *Miſdemeanors*, this *Gentleman* does grant, at *p.* 18. But there may be an *Impeachment* for ſundry *Offences* under the name of *Treaſon*, which really, according to the *Rule* of Law, are no more than *Miſdemeanors*. Why may not the Biſhops ſit as Judges *in ſuch Caſes*? Muſt the *Culprit* be delivered up to *Juſtice* upon ſuch *Impeachments*, without any further *Trial* or *Examination*, what will it amount unto? This would be a kind of *Hallifax*-Law; and that's *Irrational*.

3. In the Caſe of Sir *John Oldcaſtle*, this *Gentleman* tells us, *Pag.* 38, 39. "The Popiſh Biſhops did excommunicate and condemn him "for an Heretick, and ſo turn'd him over to the Secular Judgment (*for execution*) yet certainly (*ſaith this* Gentlem. *p.* 39.) thoſe "good men, I mean thoſe Popiſh Biſhops would have no more "to do with him, as to his further Execution, that the World "might ſee they were not men of Blood. So that 'tis pretended at leaſt, that this *Holy Canon* (as they call it) was deſign'd for Caution, that the *Prelates* might have no *hand in Blood*; and yet the practice is ſo *irrational*, it does not ſufficiently prevent it. For in their *Legiſlative capacity*, this *Gentleman* grants, *p.* 3. that they may *Sit*, and *Vote*, and paſs *Bills* of *Attainder* *. And, *p.* 104. "Acts of Attainder are Laws, and every Freeman "is ſuppoſed to give his conſent to every Law, either by his "Repreſentative, or in perſon, if a Member of Parliament; "and Biſhops being Members, may, I think (*ſaith he*) "claim to do it perſonally. And though there be a great ſtir about ſuch things as are *preliminary*, and *preparatory to*

* *He ſaith p.* 51 *the E. of* Straffords *Trial was compleated that way.*

Let. p. 71. Condemnation, yet the *Conſtitutions* of *Clarendon* enjoyned them to attend the Court *quouſque perveniatur ad diminutionem Membrorum, vel ad Mortem*; till it comes *to loſs of Life or Member* (which the *Lawyers* underſtand to be the Sentence of *Guilty* or *Not Guilty*.) Now I would fain be reſolved, whether *theſe proceedings* be not *in agitatione cauſæ ſanguinis*? whether accoording to this practice a *Caſe of Blood* be not all the while in *agitation*? And then reflecting upon the *Gentlemans* Rule in *Logick*, *Cauſa cauſæ eſt cauſa cauſati*, and upon the Story of *Chaucer's* Frier, let the Reader pleaſe to peruſe *p.* 64, 65, 66, of the *Letter*, and then judge whether the practice be not, (as I ſaid) *Irrational*. And then,

p. 1.

Secondly, This practice of thoſe *Popiſh* times was *uncharitable*; for if the Biſhops were debarr'd ſitting as Judges in ſuch *Caſes Capital*, out of a *ſuſpition* of their *Integrity*, it was *uncharitable* to the Biſhops; if out of a jealouſie they might be too *ſoft* and *yielding* in their clemency, it were *uncharitable* to the *Delinquent*; if out of *fear* they might be too *ſevere* in point of Juſtice, it is *uncharitable* to the *Commonwealth*; for Diſcretion ought to take her Rules from Charity, when *Pity*, and when *Severity* are to be uſed for the advantage of the Publick. Sometimes *Juſtice* may be provoked into *Severity*, and when *Impeachments* are preferr'd with *rigour*, 'tis poſſible the *Prudence* and *Piety* of ſuch grave and holy perſons intervening, a *raſh* and *unadviſable* Sentence may be ſtopt and prevent a Deluge of Miſchiefs, which might otherwiſe enſue. † Had the Biſhops been preſent at *Haxeye's* Trial, they might as well have prevented his Condemnation, as obtained his Pardon.

† *See the Caſe*, p. 26, 27, 28. *of the Letter.*

The *Canon-Law* then gave the firſt *riſe* and *beginning* to this Uſage (as this *Gentleman* ſeems to acknowledge, *p.* 68.) But the Ground of that *Canon* was *Superſtition*, and it did *confront* the Kings *Supremacy*, and was *irrational* and *uncharitable* in the practice of it: Let us therefore examine what *Force* it had, and by what *Authority*. That this was in uſe while the *Pope* had a *concurrent Juriſdiction* here, cannot be denied; but whether ever it received a *Civil Sanction*, and an *expreſs Ratification*, and had *the ſtamp of Parliament-Authority ſet upon it*, is the matter now in queſtion. And this I do ſtedfaſtly deny, and the *Gentleman* as earneſtly affirm and contend for.

To prove this, he does alledge a *double confirmation*, and to give it the more *Credit*, he carries it up as high as the dayes of *Edward* the Confeſſor. But I deſire the Reader to obſerve, that in the management of his Evidence, he turns an *Indul-*

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gence into a *Prohibition*; a *Priviledge* into a *compleat Act* of Parliament; and a *Proteſtation* into a *Statute*.

He does alledge the *Year-Book* of 10 *E.* 4. *Term. Paſch. n.* 35. Where we have ſet down the manner of their *Trials* in Parliament; ['When a Lord is indicted, &c. he ſhall plead *Not* 'Guilty, and this ſhall be tried by his Peers; and then the 'Lords Spiritual, *who may not conſent to the Death of any man*, ſhall 'make their *Proctor*, &c. This (*ſaith he*) I alledge, to ſhew 'that even by the Law of the Land, the Biſhops cannot be 'Judges in a Caſe Capital.] Here the *Gentleman* ſays, *Their making a* Proctor, *was* Error Temporis; *the Error of thoſe Times*. Why? Becauſe that practiſe was not for his purpoſe. But, if, by the *Law of the Land*, he means the *Statute-Law* (as he ſeems to do) I muſt have a *Writ of Error*, to *reverſe* his Judgment. For the *Pope* having then a *concurrent Jurisdiction* here in *England*, the *Canon-Law* was in *force* amongſt them; and in declaring that *the Lords Spiritual might not conſent to the Death of any man*, they have reſpect to the *Prohibition* of the *Canon-Law*, but this is not any the *leaſt confirmation* of it. *Let. p.* 78.

But this *Gentleman* will needs have it confirmed by a *Civil Sanction*, and ſo become the Law of the Kingdom.

The *firſt Confirmation*, he ſaith, was about the time of 10 *H.* 2. amongſt the *ſixteen Conſtitutions of* Clarendon, *which* (beſides the Authority of Parliament (to make the Obſervation of them the more inviolable) 'were eſtabliſhed by the Solemnity 'of an Oath, which is the greateſt Obligation that Mankind 'is capable of, making even God a Party to it, to ſee it obey-'ed, and puniſh the Tranſgreſſors. Here is a fair *Plea* for a ſolemn *Confirmation*, if the *Gentleman* were not *partial* or *miſtaken* in the Buſineſs. But the Caſe was this, upon the account of their *Immunities*, the *Prelates* eſpecially grew very *remiſs* and *careleſs* of their Duties (as was noted formerly.) Hereupon, in that *Great Council* (*which was then their Parliament*) *amongſt the reſt*, the King made this, (the 11th. of thoſe Conſtitutions,) 'The Archbiſhops, Biſhops, *& univerſæ perſonæ Regni*, (not all the *Dignified Clergy* of the Land, as this *Gentleman* renders it, but) 'all perſons whatſoever, who have a Tenure *in* 'capite, ſhall hold their poſſeſſions from the King as a *Barony*, 'and ſhall anſwer for their Eſtates unto the Kings Juſtices 'and Miniſters, and ſhall obſerve and obey all the Kings 'Laws; and together with other Barons they are to be pre-'ſent in all Judgments in the Kings Courts. [This is the *Duty* they are obliged and ſolemnly ſworn to; and then follows *p.* 69, &c. *p.* 72. *p.* 71.

lows an *Indulgence* or *Priviledge*] till the Sentence comes *to the loss of Life or Member*; and here they are left to their *Liberty* to observe the *Decree* of the *Holy Canon*. Hereupon *we may build our Faith, that there was* really *such an Usage* (as this *Gentleman* infers) *in ancient times, and that a liberty* was left to continue it (according to the *Canon*, and in veneration of it) but that 'twas *ratified* and *confirmed*, we have not one Syllable to prove it.

p. 73.

p. 18, &c. 71, &c.

The Second *Confirmation* this *Gentleman* finds, was in 11 R. 2. upon the *Protestation* of the *Archbishop*, for himself and the other Bishops. And here (after some *fluctuation* and *unsteadiness*,) *p.* 75. to make it a *Law*, he tells us, "The subject mat-"ter enacted did consist of two Particulars; the one, That "the Prelates had a Right to sit and vote in all other Businesses; *the other*, "That they had no Right, nor was it lawful for them "to be present in Parliament, when such Businesses were in "question: *But the* Tenour *of their Protestation is*, "That "they intend to be present, to consult, to treat of, and to "determine, *in omnibus*, in all things, saving their Rights, "their State and Dignity. *But because* some things were to "be transacted in that Parliament, at which, by the Decrees "of the Sacred Canons, it was not lawful for them to be per-"sonally present, therefore they protested, that while such "things were in agitation, they would absent themselves. "Which Protestation, being read in Full Parliament, at the "instance and prayer of the Archbishop and other Prelates, "was entred upon the Parliament-Roll, by the Kings Com-"mand, with the Assent of the Lords Temporal and Com-"mons. This, the *Gentleman* will needs contend to be a *Law* of Parliament, (or a *Law of the Land.*) Why? Because it was *entred in the Roll or Journal-Book*, that such a thing was *agreed upon by the King and Two Houses*; "Which (saith he) "was all the Formality of passing Laws in Parliament, in "those times. But what was it that the Bishops petitioned might be *entred* upon the *Parliament-Roll*? Was it the *Decree* of the *Sacred Canons*, which debarr'd their presence in the *House* at such Debates? *That* indeed had been somewhat to the purpose: but here was no such matter desired; it was their *Protestation*: and if every thing that is *entred* upon the *Parliament-Roll* by the *Agreement* of the King and the Two Houses, becomes *an Act of Parliament* forthwith, then let this *Protestation*, for the *present*, pass for an *Act* of Parliament; and we shall see anon what it will amount to.

p. 23.

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In the Interim let us return to the *Conſtitutions* of *Clarendon*, where there ſeems to be moſt colour for ſuch a Confirmation. There we may obſerve *Two* things in that 11th. *Conſtitution*, *a Duty enjoyned*, the Prelates *attendance at the Kings Courts*; and then a *Liberty* or *Priviledge* indulged; *That they may withdraw and forbear that attendance, when it comes to ſentence for loſs of Life or Member.* That *this* is a *Priviledge* or a *Liberty*, cannot be denyed. *Mat. Paris* reckons it *inter Libertates*, amongſt the *Ancient Liberties* *; and this *Gentleman* could not chuſe but obſerve it, (though it was not for his purpoſe to diſtinguiſh this *Priviledge* from the *Injunction*) "One would think (ſaith he) they (*the* "*Biſhops*) might look upon (*it*) as a Right and Priviledge, to "be exempt from being obliged to attend in ſuch Caſes, Caſes "of Blood. If a *Priviledge*, then I may *uſe* or I may *forbear* it. To ſay, I *may* do ſuch a thing, therefore I *ſhall* do it, is *irrational*; ill *Logick*, and worſe *Polity*. *Priviledges*, ſay the *Lawyers*, are *Franchiſes* and *Liberties*, or *Immunities* granted to a *Perſon*, an *Office*, or a *Corporation*. Such as have them, may either *enjoy* or *refuſe* them. It is the *Priviledge* of *Attorneys* and *Clerks* in they *Kings* Bench, they cannot *be preſt for Soldiers*, they cannot be *compell'd to bear Offices in their Pariſhes*; yet *Volunteers* they may be in both Caſes. No man ſhould be *compell'd* to uſe his *Priviledge*; for then his *Franchiſe* would be no *Liberty*, but the more *inthrall* him. We may obſerve accordingly, that the *Prelates* very well underſtood this their *Liberty*; for ſometimes they would *uſe* their Priviledge, *abſent* themſelves, when *Caſes Capital* were upon *Trial*, and *withdraw*, when Matters of *Blood* were in agitation; and this is obvious to every eye in the peruſal of the *Gentlemans* Letters. But many times (which is very conſiderable in the Caſe) when they did *withdraw*, they either made a *Proxy* to repreſent them, or entered their *Proteſtation* to preſerve their *Rights*. 'Tis true, the *Gentleman* does except againſt their way of *Proxy's*, as *Unparliamentary*; and *three* or *four* Exceptions he hath, which are ſufficient to *elude* any Teſtimony: For either it is *Error Temporis*, an Errour of thoſe times; or ſpoken *obiter*, upon the By, and of no importance; or it is *unparliamentary* and extravagant, or elſe *Repealed*: Such a proviſion of *Evaſions* as may ſerve to help a man out of the *Nooſe* of any Argument that can be produced in Matters of this Nature.

* *Let. p. 7.*

For the *Proteſtation*, he would *elude* the *force* of that, by ſaying, "Their *Salvo*, that which they would enſure to them- *p. 21.*
"ſelves, is their Right of ſitting to conſult, treat of, and de-

"termine in that, and all other Parliaments, when Capital "Caſes are not in queſtion: but there was no need of a *Proteſtation* to this effect: This was their *Duty*, to which the *Clarendon Conſtitution*, and *a Solemn Oath* obliged them. When men proteſt a *Right*, 'tis not to be underſtood of *that* Right which no man doubts of, and therefore is not liable to queſtion; but of *that Right* which they give ſome *colour* to be *queſtion'd*, becauſe they *decline* and *forbear* the *uſe* and *practice* of it: *This* was a *Right* to *debate*, *vote* and *ſit* as *Judges* in *Caſes Capital*, if poſſibly the *Decree* of that *Canon* ſhould come to be *null* (as now it is) or *altered*.

I muſt not forget to tell you of *two Rules* obſervable about ſuch *Priviledges* as are granted to Subjects by the King, as this of the *Clarendon Conſtitution* was to the *Prelates*. The firſt is, That *they are not to be underſtood to debar the Kings Commands*, nor ought to be a *Superſedeas* to his *Sovereign Authority*, for this were a *derogation* to his *Royal Office*, a diminution to his *Crown and Dignity*; not to be granted by him upon any pretence whatſoever. By the Conſtitutions of *Clarendon*, the King did *exempt* the Biſhops from *attending* his Court of Parliament at *ſuch Trials* in *Capital Caſes* in general; but he did not *abſolve* them from their *Duty* and *Obedience* to his own *ſpecial commands*, upon any juſt occaſion. Hereupon in the 11th. *Hen.* 2. Archbiſhop *Becket*, in a *Solemn* Council at *Northampton*, being accuſed of *Treaſon*, and other Miſdemeanors, where *Biſhops* were his *Judges*, as well as *Temporal* Lords; when thoſe *Lords* and *Biſhops could not agree about pronouncing the Judgment*, *they putting it off from one to the other*; at laſt *the King commanded* the Biſhop of *Wincheſter* to *do it*. This hapned *ſoon after* the *Ratification* of the *Clarendon Conſtitutions*, which all the Lords and Biſhops had taken their *corporal Oath* to obſerve for ever: And it is not to be imagined they could forget what had been ſo *lately* done amongſt them; wherefore we muſt conclude that *they* did not take themſelves to be obliged either by that *Oath* or *Conſtitution*, to *abſent* themſelves *alwayes* from *ſuch* Trials; for though the *Conſtitution* ſaith, *Debent intereſſe judiciis curiæ Regis, ſicut cæteri Barones*; "That they ought, as well as other Barons, to at-"tend all the Judgments of the Kings Court; *quouſque perve-"niatur ad diminutionem membrorum, vel ad mortem*; till the Matter "comes to Sentence, for the loſs of Life or Member.

Yet (whatſoever *William* Lord Archbiſhop of *Canterbury*, and the reſt of the Biſhops had ſaid in their *Proteſtation*, 11 R. 2.) The *Conſtitution* of *Clarendon* doth not ſay, *Debent ſe abſentare*, that

that the Biſhops *ought to withdraw and abſent themſelves* from ſuch Sentence. This *Gentleman* endeavours to *invalidate* this ſo pre- p. 60, 61.
gnant an Evidence, becauſe it is taken out of a *Manuſcript* made by the Monk *Stephanides*; and none of the *Ancient Hiſtorians* of thoſe times ſay any thing of *Becket's* being *accuſed for Treaſon.* But I muſt tell you, 'tis not the *Print* that adds *Truth* or *Authority* to any Writing; and I ſhall truſt Mr. *Selden's* Judgment, rather than this *Gentlemans* Conjectures: Beſides, *A Negative Argument from Authority* is of no force; for why do we read variety of *Hiſtorians* upon the ſame Subject; but becauſe we ſuppoſe what one fails in for want of Memory or Information, another may ſupply by a better Diligence and Enquiry.

The *Second Rule* obſervable in matters of *Priviledge*, is this, *Privilegia omnia ſine prejudicio Tertii concedenda & conceſſa intelligenda ſunt*; "We muſt underſtand all priviledges that are granted, "to be granted without any prejudice to any third perſon. Now this *Gentleman* quotes *Brompton's* Chronicle, reciting a- p. 108.
mong the Laws of King *Athelſtan*, this concerning Biſhops; *Debent Epiſcopi cum ſeculi Judicibus intereſſe Judiciis, ne permittant, ſi poſſint, ut aliqua pravitatum germina pullulaverint*; "The Biſhops "ought to be preſent in Judgments with the Secular Judges, "not to ſuffer any Buds of wickedneſs to ſprout up if they can "hinder it. And does not the Law of God oblige ſuch as are in Authority, to uſe their Power as well to *reſcue* the oppreſſed, as to *puniſh* evil doers? Let us conſult the wiſe man, *Prov.* 24. 11, 12. *If thou forbear to deliver them that are drawn unto death, and thoſe that are ready to be ſlain; if thou ſaiſt, Behold we knew it not; doth not he that pondereth the Heart conſider it? and he that keepeth thy Soul, doth not he know it? and ſhall not he render to every man according to his works?* This, ſaith the Author of the *Synopſis*, concerns eſpecially ſuch as are in *Authority*: And (as Dr. *Tho. Cartwright* comments upon the place) *Quamvis periculum certum non ſit, ſi tamen ſuſpitio aliqua mortis imminentis juſta ſubſit, non eſt cunctandum, donec morti quis adjudicatus fuerit; facilior enim eſt Liberatio, dum exitus adhuc dubius eſt, quam cum lata eſt Mortis ſententia*: And I muſt not omit what the ſame Author ſaith a little after; *Quemadmodum autem inſontes, ſi poſſis, non liberare; ſic maleficorum, quantum in te eſt ſupplicium non promovere, atrox flagitium eſt*: and for this, the ſaid *Cartwright* quotes the ſame *Solomon*, Prov. 17.15. This is a matter of ſo great importance, every man who has a *Right* and *Power* of Judicature, ought eſpecially to conſider it. And if this *Gentleman* be as ſincere in his Profeſſion towards the Biſhops (which I have no reaſon to queſtion) as he

is

is just and modest in saying, that *he does not envy them their Honour*. I hope he will be so ingenuous also, as not to *deny* the *King* their *faithful counsel*, nor the Countrey their *pious Aid* and *Service*.

* *This Talk therefore is faln into a more able hand.*

For the Body of his Epistle, it consists of *Record* and *Precedents*, which most men want means and *opportunity* to examine *, and very many *skill* to construe and comment on: This is the Evidence which this *Gentleman* does produce, and that it may be the better understood, I shall lay down some undoubted *Principles*, *Rules* and *Observations*, that the Reader may the better judge of it. And I shall observe,

1. The Lords *Spiritual*, being *Barons*, *Peers*, and *Great men*, they are many times comprehended under *these Titles*, when they are not stiled by their *proper* and *distinctive* Names of *Bishops* or *Prelates*. I shall need to instance in no more than that of *Magnates*, Great men. In the Reign of *Edrid* (948) we read thus, *In Festo Nativitatis B. Mariæ, cum universi Magnates Regni per Regium edictum summoniti, tam Archiepiscopi, & Episcopi, quam cæteri totius Regni Proceres, & Optimates* Londini, *&c.*

Here Archbishops and Bishops are Magnates *as well as others.*

2. *A Negative Argument from Authority is of no validity*, v. g. Such a Writer does not report such a thing; therefore there was no such Matter: this does not follow.

3. *The practice* of *Ancient* times, in the *case* before us, was very *variable*: For they were under the *Popes* Jurisdiction, *who* kept the *Canon-Law* in force; and among the rest, this *Canon* touching the Bishops *Recess* from all *Trials* in *Cases capital*. In obedience to which *Canon* they did, for the most part, *absent* themselves. But when *H.* 2. by the *Constitution* of *Clarendon* enjoyned all *Prelates*, as well as other *Barons*, to attend his Courts, he granted them withal a *Liberty* or *Priviledge* to *absent* themselves (if they should think good) from *Trials* of *that* nature: Hereupon *they* did *sometimes* use their Priviledge, and *absented* themselves; *sometimes* they did *refuse* their Priviledge, and *sate* as Judges.

4. We may observe how the Matter was carried, running through all the *Trials* upon *Record*, as this *Gentleman* gives account of them †, and in *his* Method.

† *With what care and fidelity is left to others to examine and make report.*

1. The first is 4 *E.* 3. in *Mortimers* Case; where we have *Earls*, *Barons*, the *Peers*; afterwards, *Earls*, *Barons* and *Peers*: the Bishops may be comprehended under either Title of *Barons* or *Peers*; for they were both.

5 *E.* 3. The Bishops *would* not understand their *Duty* at all: they would neither *keep the peace*, nor *punish* a *Battery*. This was

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a ſtupid Neglect; but ſignifies nothing to the deciding of the Controverſie.

3. 25 *E.* 3. The Biſhops may be comprehended under the Name of *Grantz*, *Magnates*, the *Great* men.

4. 42 *E.* 3. Here the Biſhops were preſent by their title of *Prelates*.

5. 50 *E.* 3. The Biſhops were *preſent* at theſe *Trials*, yet *two* of the Delinquents were *Lords*.

6. 1 *R.* 2. They *were*, and they *were not* preſent; the Caſe is *doubtful*.

7. 3 *R.* 2. If the Biſhops were *not* preſent, 'tis confeſt they *might* have been; for what was done, was done by the *Legiſlative Power*, and in *that capacity* to paſs *Bills* of *Attainder*, the *Gentleman* grants they have a *Right*.

8. 4 *R.* 2. If the Biſhops be *Peers* of the *Realm*, and *Lords* of Parliament, they might be comprehended there. To ſay they are always expreſt by the *Name* of *Prelates*, is to *beg* the Queſtion.

9. 7 *R.* 3. It ſeems the Lords *Spiritual* were *abſent*.

10. 10 R. 2. Here the Biſhops were *preſent*, and *judged* of *Miſdemeanors*, which (for ought we know) upon *Trial*, might have amounted to *Merit* of Death.

11, 11 R. 2. The Biſhops were *virtually* preſent by their *Proteſtation*.

12. 20 R. 2. *Thomas Haxey* Clerk (whether he was a Member of the Houſe may be a queſtion) but his fault (however aggravated) ſeems to be but a *Miſdemeanor*, at the *Trial* whereof, the Biſhops had *right* undoubtedly to be preſent; whether they were preſent, ſeems *doubtful*: but 'tis moſt certain it had been more *ſafe* and *charitable* to prevent the Condemnation, than to run the hazard of an *After-Game*, when he was condemn'd, to ſeek his Pardon.

13. 21 R. 2. In this Parliament, the Biſhops were preſent by their *Repreſentative*, by *Proxy*, and that *three* ſeveral times, upon *three* ſeveral Occaſions.

14. 1 *H.* 4. Here they were *preſent*, but gave no Judgment.

15. 2 *H.* 4. It does not *appear* that the Biſhops were preſent.

16. 5 *H.* 4. The Biſhops may be comprehended under the title of *Peers*, and the Matter being found but a *Treſpaſs*, their *right* of Sitting, the *Gentleman* cannot deny them.

17. 7 *H.* 4. Here the King *commanded* the Advice *only* of the Lords *Temporal*, which was a *ſpecial* Caſe.

18. 5 *H.* 5. Here the Biſhops had declared Sr. *John Old-caſtle* Heretick, and delivered the Priſoner over to the *Secular* Power; and yet in the Sentence, they may be comprized under the Title of *The moſt wiſe Lords of this preſent Parliament.*

19. 2 *H.* 6. It is not *certain* the Biſhops did *Vote.*

20. 28 *H.* 6. The *two* Archbiſhops and 13 Biſhops were *preſent*, did *Debate* and *Vote* in the Caſe.

21. 31 *H.* 6. The Biſhops doubtleſs (as well as in the 28) were *preſent*, being *Peers* of the Realm, as I have proved.

22. 38 *H.* 6. The *Commons* did accuſe; the King anſwered, *He would be adviſed*; and ſo the Matter ended.

Here we have 22 Precedents cited by this *Gentleman*, from the time of *Clarendon Conſtitutions* to the Trial of the E. of *Straſford*; whereof *one* is a *ſpecial* Caſe; *three* are inſignificant and *null*, in regard there was either *nothing* at all done, or a *ſtupid neglect* of their *Right*, or a careleſs throwing off of all *Duty*. *Four* are doubtful; *Ten* are for their *preſence* at *ſuch* Trials, either in *perſon* under the Names and Titles of *Biſhops*, *Prelates*, *Peers*, *Great men*, or *Lords of Parliament*; or preſent *virtually*, by their *Proxies*, or their *Proteſtations*; ſo that there are but *four* of all the 22, for their *not appearing*, or *not voting* at *ſuch* Trials.

5. For a *Superſedeas* to all further enquiry or diſpute about this matter, we muſt take notice that the *Canon* which required the Biſhops to *withdraw* at all Trials in *Caſes Capital*, is *aboliſh'd*, and the Lords *Spiritual* are under no obligation to obſerve it. To ſay the *Civil Sanction* does ſtill *enforce* it, is abſurd; for what is that *Civil Sanction* but an *Act of Parliament*? and if an *Act* of Parliament hath *aboliſht* it, it has likewiſe aboliſht all other Acts, which might ſeem to *ratifie* and *confirm* it; otherwiſe it ſhould be *aboliſht*, and *not aboliſht*, taken away, and yet in force ſtill; which are Contradictions, and abſurd.

The *Gentleman* takes notice of this to be the Biſhops *Plea*, (*p.* 67, 68.) *That it is only by the Canon Law that this reſtraint is upon them, and that the forbearance of their Predeceſſors being Papiſts, and ſo ſubject to that Law, was only in that reſpect; which Law being of no force at preſent, and taken away by Act of Parliament, they are now at liberty, though in Modeſty they think fit ſometimes to withdraw, but have a Right to continue ſitting if they pleaſe.*

What does the *Gentleman* anſwer to *this*? He ſaith, *I do not deny but the Canon Law might give the firſt riſe to ſuch an Uſage; but*

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it came afterward to receive a civil Sanction; the ſtamp of Parliament-Authority, and ſeveral confirmations, ibid. But I have evinced already that his *Allegations* do not prove what he pretends to undertake; and the *practice* of the Biſhops *withdrawing* at ſuch *Trials*, having no other *bottom* to relie on than the *Canon Law*, *That* being abſolutely diſſolved and broken by *Act* of Parliament, cannot now ſupport it.

6. And laſtly, Seeing there is no *other* Authority to *continue* and *inure* this practice but that *Popiſh Canon*, I ſhould think it a very dangerous thing (if the King ſhould be ſevere) for any perſon to attempt it; for upon the Clergies *ſubmiſſion* to the King 25 *H.* 8. 19. the *Statute* ſaith thus, [*Be it therefore now enacted by Authority of this preſent Parliament, according to the ſaid ſubmiſſion and petition of the ſaid Clergy, that they nor any of them, from henceforth ſhall preſume to attempt, alledge, claim or put in ure any Conſtitutions or Ordinances, Provincials or Synodals*, or *any other Canons, unleſs the ſame Clergy may have the Kings moſt Royal Aſſent and Licence——upon pain of every one of the ſame Clergy, doing contrary to this Act, and being thereof convict, to ſuffer impriſonment, and make fine at the Kings Will.*

After *thoſe* Precedents above-mentioned, the next the *Gentleman* meets with, was the Earl of *Straffords*, whoſe *Trial* in Parliament was *compleated* in *a Judicial way*; but he was *attainted* and *condemned* by the *Legiſlative Power*, where this *Gentleman* does acknowledge a *Right* in the Biſhops to be preſent. Why they did *then* withdraw themſelves, ſuch as were not *Eye-witneſſes* or *Obſervers* of *thoſe* times, may beſt learn from Mr. *Hobbes* his *Hiſtory* of them.

To conclude, the Author does *proteſt*, that he hath the very ſame *Deſign*, *Aim*, and *Wiſhes* with that *Gentleman*; for *that Right may prevail is the natural wiſh of every good man.* And the *prevention* of thoſe *Miſchiefs* which the *Enemies* to our *Religion* and *Government* have *plotted*, and do *atchieve* to put in *execution*, has *incited* me to this task *to ſatisfie my ſelf and others, where the Right is.* My Sentiments herein *I* humbly *ſubmit* to the *High* and *Honourable* Court of Parliament; and if I have written any thing that gives a *juſt cauſe of offence* to my *Superiors*, I do here ſolemnly *retract* it.

This *Gentleman* is *Ingenuous*, and leaves his Reader to his *Liberty*, to weigh the Arguments on *both* Sides, and *judge* for himſelf. I have taken the *freedom* he allows me, and delivered my Opinion: I pray take you the *ſame* courſe without *Partiality*, and then judge for your ſelf.

FINIS.

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